

Merit Systems Protection Board

§ 1201.27

appeal may be excluded if a party shows that including it would result in undue prejudice.

(c) *Use of Board form or electronic filing.* An appellant may comply with paragraph (a) of this section, and with § 1201.31, by completing MSPB Form 185, or by completing all requests for information marked as required at the e-Appeal site (<https://e-appeal.mspb.gov>). MSPB Form 185 can be accessed at the Board's Web site (<http://www.mspb.gov>).

(d) *Right to hearing.* Under 5 U.S.C. 7701, an appellant has a right to a hearing.

(e) *Timely request.* The appellant must submit any request for a hearing with the appeal, or within any other time period the judge sets for that purpose. If the appellant does not make a timely request for a hearing, the right to a hearing is waived.

[54 FR 53504, Dec. 29, 1989, as amended at 68 FR 59862, Oct. 20, 2003; 69 FR 57629, Sept. 27, 2004]

§ 1201.25 Content of agency response.

The agency response to an appeal must contain the following:

(a) The name of the appellant and of the agency whose action the appellant is appealing;

(b) A statement identifying the agency action taken against the appellant and stating the reasons for taking the action;

(c) All documents contained in the agency record of the action;

(d) Designation of and signature by the authorized agency representative; and

(e) Any other documents or responses requested by the Board.

§ 1201.26 Number of pleadings, service, and response.

(a) *Number.* The appellant must file two copies of both the appeal and all attachments with the appropriate Board office, unless the appellant files an appeal in electronic form under § 1201.14.

(b) *Service*—(1) *Service by the Board.* The appropriate office of the Board will mail a copy of the appeal to each party to the proceeding other than the appellant. It will attach to each copy a service list, consisting of a list of the names and addresses of the parties to

the proceeding or their designated representatives.

(2) *Service by the parties.* The parties must serve on each other one copy of each pleading, as defined by § 1201.4(b), and all documents submitted with it, except for the appeal. They may do so by mail, by facsimile, by commercial or personal delivery, or by electronic filing in accordance with § 1201.14. Documents and pleadings must be served upon each party and each representative. A certificate of service stating how and when service was made must accompany each pleading. The parties must notify the appropriate Board office and one another, in writing, of any changes in the names, or addresses on the service list.

(c) *Paper size.* Pleadings and attachments must be filed on 8½ by 11-inch paper, except for good cause shown. This requirement enables the Board to comply with standards established for U.S. courts. All electronic documents must be formatted so that they will print on 8½ by 11-inch paper.

[54 FR 53504, Dec. 29, 1989; 55 FR 548, Jan. 5, 1990, as amended at 58 FR 36345, July 7, 1993; 68 FR 59862, Oct. 20, 2003; 69 FR 57629, Sept. 27, 2004]

§ 1201.27 Class appeals.

(a) *Appeal.* One or more employees may file an appeal as representatives of a class of employees. The judge will hear the case as a class appeal if he or she finds that a class appeal is the fairest and most efficient way to adjudicate the appeal and that the representative of the parties will adequately protect the interests of all parties. When a class appeal is filed, the time from the filing date until the judge issues his or her decision under paragraph (b) of this section is not counted in computing the time limit for individual members of the potential class to file individual appeals.

(b) *Procedure.* The judge will consider the appellant's request and any opposition to that request, and will issue an order within 30 days after the appeal is filed stating whether the appeal is to be heard as a class appeal. If the judge denies the request, the appellants affected by the decision may file individual appeals within 30 days after the date of receipt of the decision denying